

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014010263

ORDER DENYING REQUEST FOR
RECONSIDERATION AND MOTION
TO CONTINUE

On May 22, 2014, the undersigned administrative law judge issued an order granting Oakland Unified School District's (Oakland) request for a continuance and scheduling the hearing to commence on August 5, 2014. On May 23, 2013, Oakland filed a request for reconsideration or in the alternative a motion to continue the scheduled hearing dates to September 2014. Student did not file a response to the motions.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, §11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of

the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

Oakland's motion for reconsideration is denied because Oakland did not present new or different facts, circumstances, or law justifying reconsideration. Moreover, the information provided by Oakland in support of its motion for reconsideration, like the summer schedules of its attorney and employees, was known or could have been known to Oakland at the time it filed its initial request but was not submitted for consideration at that time.

Oakland asserts that it will be prejudiced if forced to conduct a hearing during the summer months when school is not in session because many employees are not available. In support of its position, Oakland submitted four declarations, three from Oakland employees and one from Oakland's attorney. In their declarations, two Oakland employees assert that they are unavailable during most of July and August without providing the specific reason for the unavailability. The third employee indicates he will be out of the county until August 11, 2014. According to his declaration, he will be testifying not about the Student specifically but about Oakland's policies and practices with regard to residential placement for educational purposes. There is no indication that another employee from Oakland would not be able to testify regarding the same topic.

Finally, Oakland's attorney submitted a declaration providing the other hearings that she is scheduled to conduct during August. According to the declaration, however, she is not scheduled for any other hearings during the week of August 5, 2014, when this matter is scheduled to commence.

Oakland has not established good cause for an additional continuance. Therefore, the request is denied.

ORDER

1. Motion for reconsideration denied.
2. Motion for continuance denied.

3. All previously calendared dates to remain.

IT IS SO ORDERED.

DATE: June 2, 2014

/s/

JOY REDMON
ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings